



Montana Legislative History

Chapter: 51 Session L: 1981

Bill Number: 24 Senate

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	N/A
Third Reading Bill	X
Final Version of Bill	X

House

Committee:

Judiciary

Hearing Date(s):

March 3, 1981

Senate

Committee: Judiciary

Hearing Date(s):

Jan. 9, 1981

Feb. 2, 1981

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by: smg

Date: Jan. 19, 2024

Notes:

PREFILED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 12/30/80
HEARING: 1/22
FAILED TO MEET TRANSMITTAL DEADLINE: 2/25 — DIED

SB 23 — MCCALLUM — REVISING THE ALLOCATION OF FEDERAL FOREST RESERVE
MONEY TO SCHOOL DISTRICTS.
FISCAL NOTE: REQUIRED
PREFILED AND REFERRED TO COMMITTEE ON EDUCATION: 12/30/80
HEARING: 1/9
REPORT: 1/20, DO PASS
2ND READING: 1/27, YEAS: 19; NAYS: 30
ON MOTION, INDEFINITELY POSTPONED: 1/27 — KILLED

SB 24 — HAPPERMAN — TO ELIMINATE EXEMPTIONS FROM JURY SERVICE....
PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/31/80
HEARING: 1/9
REPORT: 2/3, DO PASS AS AMENDED
2ND READING: 2/5, DO PASS
3RD READING: 2/7, YEAS: 46; NAYS: 0

TRANSMITTED TO HOUSE: 2/7
REFERRED TO COMMITTEE ON JUDICIARY: 2/9
HEARING: 3/3
REPORT: 3/3, BE CONCURRED IN
2ND READING: 3/5, YEAS: 73; NAYS: 16
3RD READING: 3/7, YEAS: 82; NAYS: 13

RETURNED TO SENATE: 3/7

TRANSMITTED TO GOVERNOR: 3/11/81
ACTION: 3/16, SIGNED
CHAPTER 51

SR 25 — HAPPERMAN — TO PROHIBIT THE USE OF HERBICIDES AND INSECTICIDES
ALONG ROADWAYS....
PREFILED AND REFERRED TO COMMITTEE ON AGRICULTURE: 12/30/80
HEARING: 1-7
REPORT: DO NOT PASS, 1-7
REPORT: ADOPTED, 1-7
BILL KILLED: 1-7, YEAS: 38; NAYS: 11

SR 26 — NORMAN — REQUIRING INDUSTRIAL DEVELOPMENT REVENUE BONDS TO BE
REGISTERED IN THE OFFICE OF SECRETARY OF STATE.
PREFILED AND REFERRED TO COMMITTEE ON STATE
ADMINISTRATION: 12/30/80
HEARING: 1/8
REPORT: 1/12, DO PASS AS AMENDED
2ND READING: 1/14, DO PASS AS AMENDED
3RD READING: 1/16, YEAS: 44; NAYS: 4

TRANSMITTED TO HOUSE: 1/16
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/17
HEARING: 3/9
REPORT: 3/9, BE CONCURRED IN, AS AMENDED
2ND READING: 3/11, YEAS: 76; NAYS: 2
3RD READING: 3/14, YEAS: 91; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/14
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 48; NAYS: 1

SENATE BILL NO. 24

INTRODUCED BY HAPPERMAN

IN THE SENATE

January 3, 1981	Introduced and referred to Committee on Judiciary.
February 3, 1981	Committee recommend bill do pass as amended. Report adopted.
February 4, 1981	Bill printed and placed on members' desks.
February 5, 1981	Second reading, do pass.
February 6, 1981	Correctly engrossed.
February 7, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 9, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurred in. Report adopted.
March 5, 1981	Second reading, concurred in.
March 7, 1981	Third reading, concurred in. Yeas, 82; Nays, 13.

IN THE SENATE

March 7, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 SENATE BILL NO. 24
2 INTRODUCED BY HAFFERMAN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE EXEMPTIONS
5 FROM JURY SERVICE AND CLARIFY WHEN A JUROR MAY BE EXCUSED;
6 AMENDING SECTIONS 3-15-312, 3-15-313, AND 3-15-505, MCA; AND
7 REPEALING SECTIONS 3-15-311 AND 3-15-314, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 3-15-312, MCA, is amended to read:
11 "3-15-312. Discharge by court. The court must discharge
12 a person from serving as a trial juror ~~in either of the~~
13 ~~following cases:~~
14 {1} when it satisfactorily appears that the person is
15 not competent; or
16 {2} ~~when it satisfactorily appears that the person is~~
17 ~~exempt and claims the benefit of exemption."~~
18 Section 2. Section 3-15-313, MCA, is amended to read:
19 "3-15-313. Who may be excused. A juror must not be
20 excused by a court for a slight or trivial cause or for
21 hardship or inconvenience to his business but only when
22 great hardship or great material injury or destruction to
23 his property or property entrusted to him is threatened or
24 when his own health or the sickness or death of a member of
25 his family requires his absence. A juror may be excused only

1 for the duration of the condition which justifies his being
2 excused from jury service."
3 Section 3. Section 3-15-505, MCA, is amended to read:
4 "3-15-505. Notice to jurors. The clerk shall serve
5 notice by mail on the persons drawn as jurors and require
6 response thereto by mail in such form as the supreme court
7 designates. ~~He may attach to the notice a form for an~~
8 ~~affidavit claiming exemption provided for in 3-15-314.~~ If a
9 person fails to respond to the notice, the clerk shall
10 certify the failure to the sheriff, who shall then serve
11 notice personally on such person and require a response to
12 the notice."
13 NEW SECTION. Section 4. No exemptions from jury
14 service. No exemptions from jury service may be allowed.
15 Each citizen is obligated to serve as a trial juror when
16 summoned unless excused as provided by law.
17 Section 5. Repealer. Sections 3-15-311 and 3-15-314,
18 MCA, are repealed.
19 Section 6. Codification instruction. Section 4 is
20 intended to be codified as an integral part of Title 3,
21 chapter 15, part 3, and the provisions of Title 3, chapter
22 15, part 3, apply to section 4.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 24

INTRODUCED BY HAFFERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE EXEMPTIONS FROM JURY SERVICE AND CLARIFY WHEN A JUROR MAY BE EXCUSED; AMENDING SECTIONS 3-15-312, 3-15-313, AND 3-15-505, 3-15-507, 46-16-301, AND 46-16-304, MCA; AND REPEALING SECTIONS 3-15-311 AND 3-15-314, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases: IN EITHER OF THE FOLLOWING CASES:

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(2) when it satisfactorily appears that the person is exempt and claims the benefit of exemption.

(2) WHEN IT SATISFACTORILY APPEARS THAT THE PERSON SHOULD BE EXCUSED UNDER 3-15-313 OR 3-15-507."

Section 2. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused -- AFFIDAVIT TO CLAIM EXCUSE. A juror must not be excused by a court for a slight or trivial cause or for hardship or inconvenience to his business -- but only when great hardship or great material

injury or destruction to his property or property entrusted to him is threatened or when his own health or the sickness or death of a member of his family requires his absence. A juror may be excused only for the duration of the condition which justifies his being excused from jury service. (1) THE COURT SHALL EXCUSE A PERSON FROM JURY SERVICE UPON FINDING THAT JURY SERVICE WOULD ENTAIL UNDUE HARDSHIP FOR THE PERSON OR THE PUBLIC SERVED BY THE PERSON.

(2) IF A PERSON BELIEVES JURY SERVICE WOULD ENTAIL UNDUE HARDSHIP FOR HIM OR THE PUBLIC SERVED, HE MAY MAKE AND TRANSMIT AN AFFIDAVIT TO THE CLERK OF THE COURT FOR WHICH HE IS SUMMONED STATING HIS OCCUPATION OR SUCH OTHER FACTS AS HE BELIEVES WILL EXCUSE HIM FROM JURY SERVICE. THE AFFIDAVIT SHALL BE FILED WITH THE CLERK OF THE COURT WHO SHALL TRANSMIT IT TO THE COURT. THE COURT MAY EXCUSE A PROSPECTIVE JUROR FROM JURY SERVICE IF THE PROSPECTIVE JUROR SATISFIES THE PROVISIONS OF SUBSECTION (1).

(3) A PERSON MAY ALSO BE EXCUSED FROM JURY SERVICE UPON PRESENTATION OF HIS EXCUSE TO THE COURT AS PROVIDED IN 3-15-507."

Section 3. Section 3-15-505, MCA, is amended to read:

"3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an

1 ~~affidavit-claiming-exemption-provided-for-in--3-15-314. HE~~
 2 ~~MAY ATTACH TO THE NOTICE A FORM FOR AN AFFIDAVIT CLAIMING AN~~
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 5 to the sheriff, who shall then serve notice personally on
 6 such person and require a response to the notice."

7 ~~NEW-SECTION--Section-4--No--exemptions--from--jury~~
 8 ~~service--No--exemptions--from-jury-service-may-be-allowed.~~
 9 ~~Each-citizen-is-obligated-to-serve-as-a-trial-juror--when~~
 10 ~~summoned-unless-excused-as-provided-by-law.~~

11 SECTION 4. SECTION 3-15-507, MCA, IS AMENDED TO READ:

12 "3-15-507. Clerk to call list of jurors summoned and
 13 prepare capsules. (1) At the opening of court on the day
 14 trial jurors have been summoned to appear, the clerk shall
 15 call the names of those summoned and the court may hear the
 16 excuses of prospective jurors summoned. The court shall
 17 excuse any person satisfying the requirements of
 18 3-15-313(1).

19 (2) The clerk shall write the names of the jurors
 20 present and not excused on separate ballots, fold the
 21 ballots so that the names are concealed, and place them in
 22 black capsules. In the presence of the court, the clerk
 23 shall deposit the capsules containing the ballots in a box
 24 large enough to hold all of the capsules without crowding.
 25 The box shall be so arranged that the judge drawing the

1 capsules from the box is unable to see the capsules he is
 2 about to draw. The box must be kept sealed or locked until
 3 ordered by the court to be opened."

4 SECTION 5. SECTION 46-16-301, MCA, IS AMENDED TO READ:

5 "46-16-301. Formation of trial jury. (1) Trial juries
 6 for criminal actions are formed in the same manner as trial
 7 juries in civil actions, except that the total number of
 8 jurors drawn shall be at least 12 plus the total number of
 9 peremptory challenges.

10 (2) The qualifications of jurors and exemptions
 11 excuses from jury duty are prescribed in Title 3, chapter
 12 15, part 3."

13 SECTION 6. SECTION 46-16-304, MCA, IS AMENDED TO READ:

14 "46-16-304. Challenges for cause. (1) each party may
 15 challenge jurors for cause, and each challenge must be tried
 16 by the court.

17 (2) A challenge for cause may be taken for all or any
 18 of the following reasons or for any other reason which the
 19 court determines:

20 (a) consanguinity or relationship to the defendant or
 21 to the person who is alleged to be injured by the offense
 22 charged or on whose complaint the prosecution was
 23 instituted;

24 (b) standing in the relation of guardian and ward,
 25 attorney and client, master and servant, landlord and

1 tenant, or debtor and creditor with or being a member of the
 2 family or in the employment of the defendant or the person
 3 who is alleged to be injured by the offense charged or on
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5 (c) being a party adverse to the defendant in a civil
 6 action or having complained against or been accused by him
 7 in a criminal prosecution;

8 (d) having served on the grand jury which found the
 9 indictment or on a coroner's jury which inquired into the
 10 death of a person whose death is the subject of the
 11 indictment or information;

12 (e) having served on a trial jury which tried another
 13 person for the offense charged;

14 (f) having been a member of a jury formerly sworn to
 15 try the same charge, the verdict of which was set aside or
 16 which was discharged without verdict after the case was
 17 submitted to it;

18 (g) having served as a juror in a civil action brought
 19 against the defendant for the act charged as an offense;

20 (h) if the offense charged is punishable with death,
 21 having such conscientious opinions as would preclude his
 22 finding the defendant guilty, in which case he must neither
 23 be permitted nor compelled to serve as a juror;

24 (i) having a belief that the punishment fixed by law
 25 is too severe for the offense charged;

1 (j) having a state of mind in reference to the case or
 2 to either of the parties which would prevent him from acting
 3 with entire impartiality and without prejudice to the
 4 substantial rights of either party.

5 (3) An exemption excuse from service on a jury is not
 6 a cause of challenge but the privilege of the person
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8 Section 7. Repealer. Sections 3-15-311 and 3-15-314,
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10 ~~Section 6--Education--instructions--Section--4--is~~
 11 ~~intended--to--be--codified--as--an--integral--part--of--Title--3--~~
 12 ~~chapter--15--part--3--and--the--provisions--of--Title--3--chapter~~
 13 ~~15--part--3--apply--to--section--4~~

-End-

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4 substantial rights of either party.

5 (3) An exemption excuse from service on a jury is not
6 a cause of challenge but the privilege of the person
7 exempted excused."

8 Section 7. Repealer. Sections 3-15-311 and 3-15-314,
9 MCA, are repealed.

10 ~~Section 6. Codification instructions. Section 4 is~~
11 ~~intended to be codified as an integral part of title 3,~~
12 ~~chapter 15, part 3, and the provisions of title 3, chapter~~
13 ~~15, part 3, apply to section 4.~~

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 9, 1981

Page 1.

The third meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 24:

AN ACT TO ELIMINATE EXEMPTIONS FROM
JURY SERVICE AND CLARIFY WHEN A JUROR
MAY BE EXCUSED.

Senator Bill Hafferman, of Lincoln County, representing District 11, introduced the bill, and read letters of support from District Judge Robert M. Holter (Exhibit A), and County Attorney for Lincoln County, William A. Douglas (Exhibit B). These letters are attached to the minutes. Senator Hafferman then spoke in favor of the bill himself. There were no opponents.

Senator Olson opened questioning by referring to the legitimacy of a doctor's asking to be excused from jury duty. Senator Crippen added that he felt the bill as proposed went too far in limiting the discretion of the judge to excuse potential jurors. Senator S. Brown said that, in light of Senator Crippen's remarks perhaps an introductory phrase should be added, stating that if a potential juror satisfies certain criteria he could be exempt, but exemption would not be mandatory because of his profession.

Senator Anderson stated that this bill should not repeal Section 3-15-314, which states that if a person has great hardship, an affidavit would provide the means to get before the court.

J. C. Weingartner, representing Montana's State Bar Association, stated that although a separate bill brought by the clerks of court would change the duties of the clerks of court somewhat, the exemptions in Sections 3-15-311 would be left intact. Senator Hafferman said that he would leave it to this committee to establish whether the other bill under consideration would adequately address the matter he brought up in Senate Bill 24.

2

CONSIDERATION OF SENATE BILL 40:

AN ACT TO REQUIRE PLAINTIFFS WHO
RESIDE OUTSIDE OF MONTANA TO BEAR
JURORS' COSTS WITHOUT RECOVERY IN
ACTIONS WHICH COULD HAVE BEEN PURSUED
OUTSIDE MONTANA.

Senator Bill Hafferman read a letter of support on this bill from District Judge Holter (Exhibit C), which is attached to these minutes. Other than the testimonial letter, Senator Hafferman had no remarks on the bill other than to say that as a taxpayer he would appreciate passage of it.

Mike Steven, Executive Director of the Association of Counties, stated that his organization was very much in favor of the bill because of the tax dollars it would return to the counties.

J. C. Weingartner said that the State Bar neither supports nor opposes the bill, but feels that it might be unconstitutional.

There were no opponents to the bill.

Discussion among the committeemen centered around the specific problems arising which might dictate a need for this bill, and whether or not the bill was really needed. In response to a suggestion from Senator B. Brown, Senator Hafferman agreed to do further research into why a need exists for the bill.

CONSIDERATION OF SENATE BILL 14:

AN ACT PROVIDING FOR FINES AND ASSESSMENT
OF COSTS IN FELONY CRIMINAL CASES;
ALLOWING COMMUNITY SERVICE AS A CONDITION
OF DEFERRED OR SUSPENDED SENTENCES.

Senator Tom Towe, of Billings, took the committee through each section briefly and summarized the effect it would have.

Tom Honzel, of the County Attorney's office, spoke in favor of the bill. He pointed out that in some situations the victim of a crime does not want the defendant to go to prison. In those instances the judge is left with deferring or suspending sentence. He feels that this bill would make the sentencing process more meaningful. He also suggested that there should perhaps be a maximum amount of fine specified in the bill.

Mike Steven stated that the Association of Counties

supports this bill because of the option it gives the justice system, and because it saves the taxpayers money if a defendant were to pay a fine rather than go to jail. He pointed out that the cost to the county of keeping an individual in jail runs as high as sixteen to thirty dollars per day. In addition, the county would realize some reimbursement from the fines levied.

Senators Mazurek and Towe agreed that the crime of sexual assault should also be an exemption to the imposition of a fine in lieu of or in addition to a sentence.

Karen Mikota, representing the League of Women Voters, stated that the League also supports this bill.

There being no opponents to the bill, or further discussion, the meeting was adjourned at 10:57.

A handwritten signature in cursive script, appearing to read "Nick Anderson", is written over a horizontal line.

Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date January 9, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE

BILL SB 14

VISITORS' REGISTER

DATE 1/09/81

SB 24

SB 40

Please note bill no.

(check one)

SUPPORT OPPO

NAME

REPRESENTING

BILL #

Keith A. Kirkpatrick Don't Tom Lowe

14

✓

JEFF GINALIAS

SEN Bob Brown

JIM FERRON

SECRETARY OF THE SENATE

TOM HOWZEL

County Attorney

14

✓

Sharon Goodale

League of Women Voters

14-211

Karen Mikota

" "

(14) support

J.C. WINGGATWEN

State Bar of NY

40

Robert Melgaard

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

(3)

1-9-81

HELFA

443-5557

County Attorney

SB 14

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

③



Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman
Montana Senate
Capitol Station
Helena, Montana 59601

Dear Senator Hafferman:

There are two bills currently pending in the Senate in regard to the selection and exemption from service of jurors. The bill which you proposed eliminates the exemptions under MCA-3-15-311 and makes other changes in regard to excuses from service.

The second bill was proposed by the Clerks of Court of Montana and similarly repeals the exemption statute, but then goes on to change the process of selection by appointing the Clerk of Court the "Jury Commissioner". I have inspected both bills quite carefully and heartily endorse both. However, I would urge that the Clerk of Court's bill be passed by the Legislature because it encompasses your bill and puts in reform needed in the larger counties.

I would first like to address the question of jury exemptions. If you look at the history of the bill, you will see that most of the exemption statutes were passed in earlier times. The main concern was the taking of a person vital to community life from the community for a considerable period of time in jury service. Transportation was slow and the trip to the county seat might involve several days in itself. The automobile now makes such plea irrelevant.

About the only other plea that the persons who now claim exemptions can really make is "I don't want to be bothered" or "I don't want to get involved". Far too often a judge hears that as the real reason that some person who claims an exemption under the present code does not want to serve. While these people claim to be too busy to partake in their civic duties, we frequently find them occupying ski hills, golf courses, taking extended vacations and the like. Such activities which really show that the real reason they want out of jury duty is as stated above.

A careful perusal of the exemptions listed will show that the people exempted are the very ones who ought to

Exhibit A

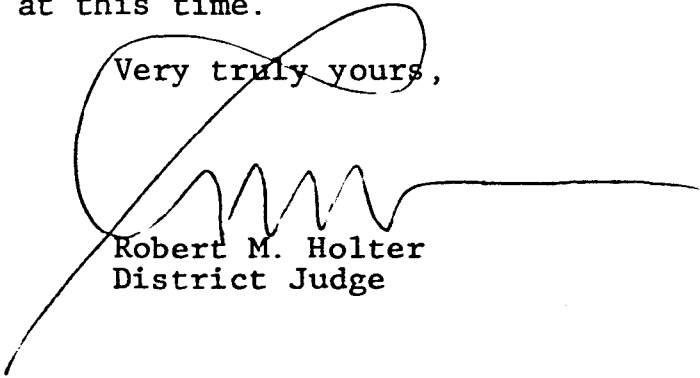
3

to serve on juries. The Legislature every session is in one manner or another approached by persons who wish to limit liability to themselves or their groups. All professional groups these days talk of "malpractice" yet these are the same ones who claim exemptions! Needless to say, it is ironic that the persons who claim to be targets of lawsuits do not want to serve on juries. In the smaller communities, these persons also represent the ones who have had better educational opportunities, greater exposure to the more complicated problems of life and as a result thereof are probably better informed. While they do not want to put aside their daily labors, I must remind you that their daily pay is no more important to them than a person who does not have the exemption. Nay, the person with less education probably sacrifices more by missing a few days of work.

In regard to the Jury Commissioner as suggested by the Clerks of Court of Montana. This is another jury service reform which will be very helpful. Under the present usage, it takes a great deal of the District Judge's time to comply with the jury selection requirements. Under the Clerk's bill, the Clerk would be substituted for the judge and would take over the judge's duties. The Clerk would be bound by the same stringent rules which guide the judge. Statewide, this bill will result in the saving of a great deal of the District Court Judge's time, freeing him for duties which are judicial other than simply administrative as the jury selection process is.

You have the right to utilize these observations for any purpose you wish in regard to the pending legislation. I wish I could spare the time to present them in person, but find it impossible to do at this time.

Very truly yours,



Robert M. Holter
District Judge

RMH:jr

Exhibit B

LINCOLN COUNTY ATTORNEY

512 CALIFORNIA AVENUE
LIBBY, MONTANA 59923

6 January 1981

P.O. BOX 795
(406) 293-6268

WILLIAM A. DOUGLAS
COUNTY ATTORNEY
SHAUN R. THOMPSON
DEPUTY

State Senator Wm. Hafferman
Capitol Building
Helena, Montana 59601

Re: Jury Duty exemptions

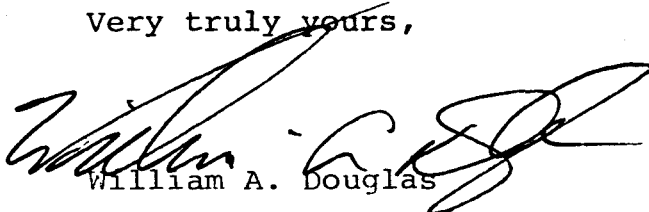
Dear Senator Hafferman:

I have been contacted by Judge Robert M. Holter respecting a bill which you are sponsoring which eliminates trial juror exemptions.

The purpose of this letter is to voice my complete support for a bill which eliminates the exemptions which currently exists under our Montana statutes. The reasoning behind the exemptions which currently exist is archaic under present day conditions. We may very well encounter a situation whereunder a party litigant, particularly a criminal defendant, may successfully challenge a jury verdict by reason of having been deprived of a panel from which the jurors were selected that contained teachers, doctors, nurses, lawyers, and other persons who are currently exempt. I understand that this has been done successfully in other states, and it is only a matter of time that it happens to us in Montana.

Again, I voice my enthusiastic support for that bill mentioned.

Very truly yours,


William A. Douglas

WAD:bn

13



Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman
Montana State Senate
Capitol Station
Helena, Montana 59601

Dear Senator Hafferman:

I would like to make some observations to you in regard to the bill on assessing court costs to a plaintiff coming in from another state whose case could be heard in that other state.

This is not a common situation, but occurs often enough to be of some concern. The situation which usually happens is that some person from another state files an action in Montana against a business entity which does business in the state where that person resides as well as in Montana. Under certain circumstances, this is completely within the law and it is the right of the plaintiff to do so.

However, the small counties sometimes end up with rather large bills because they are required to provide juries for such trial. This bill would simply put the cost of jury service upon the plaintiff in such actions.

It might be argued that this bill is unconstitutional because it differentiates between the resident and nonresident. My own reaction is that it does not. It is carefully drawn to recite that it only applies to a plaintiff who could have brought the same suit at home but for reasons of his own chooses to put it in Montana and subject the State of Montana to the expense that should be born by his state. On the defendant in his home state, the bill would not apply.

Very truly yours,

Robert M. Holter
District Judge

RMH:jr

Exhibit C

13

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1981

The seventeenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 24:

Proposed amendments were introduced into the record (marked Exhibit A and attached to these minutes). Senator Mazurek moved that the amendments pass, and his motion carried unanimously. Senator Mazurek then moved that the bill DO PASS AS AMENDED, and the motion carried unanimously with Senators S. Brown and Halligan absent at the time of the vote.

CONSIDERATION OF SENATE BILL 164:

AN ACT TO PROVIDE FOR THE PAYMENT OF
DELINQUENT COURT-ORDERED CHILD SUPPORT
BY DEDUCTION OF PAYMENTS FROM THE
INCOME OF THE OBLIGOR.

Senator S. Brown, principal sponsor, presented the bill, saying the need for change stems from the fact that a jail sentence does not solve the problem of unpaid child support payments, and that employers frequently do not withhold child support from wages.

Bob James, Great Falls attorney who does a lot of collection of child support for the Department of Revenue, then said that the Department of Revenue supports passage of the bill. He stated that seventy-five percent of all men who are divorced do not pay child support. This represents ten million children in this country who are being raised without the assistance of child support, which brings an increase of welfare payment for these dependent families. He recommended passage of the bill.

Virginia Jellison, from Missoula, spoke in support of the bill, citing her own experience as a divorced parent raising her four children without benefit of child support.

Linda Armstrong, Helena, also spoke from personal experience in supporting the bill, but would recommend an amendment in

Section 4, changing the six-month waiting period to three months.

Senator Crippen said that he did not like the burden for enforcement of child support collection to be placed on the employer. Senator S. Brown responded that, as this had not been the original purpose of the bill, language changes could be incorporated to alleviate his doubts. Bob James agreed that the intent was not to burden the employers, and that an amendment to clarify this would be in order. It was suggested that in Section 11, rather than employer "is liable" it should read "may be liable". Senator Crippen also felt that there was a problem regarding the time element involved in getting such a case on the docket, protesting the judgment, etc., and could foresee a two-year delay in actually getting anything done. He would be in favor of allowing the process to be initiated earlier, perhaps in two months after failure to make the payment, and would support a motion to that effect.

Senator Crippen then asked whether an employer would be considered liable for missed child support payments prior to his employing the defendant. Senator S. Brown stated that the intent of the bill had been only that the employer be responsible, should he fail to honor the lien, for the entire amount which became due under his employment of the defendant, not for prior obligations.

CONSIDERATION OF SENATE BILL 174:

AN ACT TO SUBJECT INSURANCE COMPANIES
NOT COMPLYING WITH SECTION 75-10-520,
MCA, RELATING TO DISPOSAL OF MOTOR
VEHICLES, TO MISDEMEANOR PENALTIES.

Senator Hager, District 30, Yellowstone County, presented the bill.

William Romine, representing the Montana Automotive Dismantlers and Recyclers Association spoke in support of the bill, stating that there was a problem in this area, even though it was not a huge problem.

Valencia Lane, from the Montana Department of Insurance, said that her department knows of only one complaint in this area, and that was handled with a phone call, so the need for this bill is questionable.

Larry Mitchell, with the Department of Health, the agency currently charged with administering the present law, stated that he hoped that this bill would not place added demands

on his department for enforcement of the law.

FURTHER CONSIDERATION OF SENATE BILL 120:

Senator Mazurek stated that he feels that the entire discretion of selecting jurors should be left up to the judge, not the clerk of court acting as a jury commissioner.

Senator Crippen agreed that excusing jurors is a judicial responsibility.

Senator S. Brown suggested amending the bill on page 3, line 22 by inserting "." following "commissioner"; striking the remainder of line 22, all of 23, 24, and 25, and inserting "The court may delegate to the jury commissioner the authority to select the panel and excuse jurors under Section 3-15-313, and generally take charge of the jury administration in the presence of a person designated by the court."

Senator Mazurek felt that the passing of the determination from the judge to the jury commissioner is bad.

Senator Anderson stated that he feels that the clerks are making most of these decisions anyway, and that the problem is not a big one. He further stated that judges are currently getting a lot of pressure to get their work done in a shorter period of time, and that passage of this bill would help them to do so.

The amendments put forward by Senator S. Brown were then voted on (see the roll call vote attached to these minutes). The motion passed six to four in favor of the amendments. At this point Senator S. Brown said that before moving on the bill he would talk with Tom Harrison, lobbyist for the judges, regarding their opinion of the amendment.

Senator Berg said that he would ask for a fiscal note to determine the impact if the fees are increased through passage of SB 120.

A handwritten signature in cursive script, appearing to read "Mike Anderson", is written over a horizontal line.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/28/

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME:

ADDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

COMMENTS:

NAME: John A. Roberts DATE: 2/21/51

ADDRESS: 921 Highland St. - Seattle Wash

PHONE: 544-0050

REPRESENTING WHOM? None

APPEARING ON WHICH PROPOSAL: S. D. 1. 21

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

17

NAME: Linda Armstrong DATE: 2-2-81

ADDRESS: 1204 9th Avenue

PHONE: 4428025

REPRESENTING WHOM? Private Citizen

APPEARING ON WHICH PROPOSAL: SB 164

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

17

NAME: William C. Parvise DATE: 2-2-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Automotive D. matters & Recyclers Assn.

APPEARING ON WHICH PROPOSAL: S.B. 174

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: the Assn. supports S.B. 174. Under the present law,
if an insurance company violates the wrecking yard act,
the only recourse available is thru the insurance commissioner's
office. Although his powers are great, most likely he would
not cancel an insurer's right to do business in Mont, because
of a violation of the act. Under this bill, local problems
could be handled locally.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

AMENDMENTS TO SENATE BILL 24

1. Title, line 6.

Following: "3-15-313,"

Strike: "and"

2. Title, line 6.

Following: "3-15-505"

Insert: "3-15-507, 46-16-301, and 46-16-304"

3. Page 1, lines 11 through 17.

Strike: lines 11 through 17

Insert: "3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person is exempt-and-claims-the-benefit-of-exemption should be excused under 3-15-313 or 3-15-507."

4. Page 1, line 19, through line 2 on page 2.

Strike: line 19 through line 2 on page 2.

Insert: "3-15-313. Who may be excused -- affidavit to claim excuse. A-juror-must-not-be-excused-by-a-court-for-a-slight-or-trivial-cause-or-for-hardship-or-inconvenience-to-his-business-but-only-when-material-injury-or-destruction-to-his-property-or-property-entrusted-to-him-is-threatened-or-when-his-own-health-or-the-sickness-or-death-of-a-member-of-his-family-requires-his-absence (1) The court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the clerk of the court for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the clerk of the court who shall transmit it to the court. The court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507.

5. Page 2, lines 7 and 8.

Following: "designates."

Strike: the remainder of line 7 through "3-15-314." on line 8, page 2.

Insert: "He may attach to the notice a form for an affidavit claiming an exemption excuse, as provided for in 3-15-314 3-15-313."

6. Page 2, lines 13 through 16.

Strike: All of Section 4.

Insert: "Section 4. Section 3-15-507, MCA, is amended to read: "3-15-507. Clerk to call list of jurors summoned and prepare capsules. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313 (1)." Subsection (2) remains without change.

Section 5. Section 46-16-301, MCA, is amended to read: "46-16-301. Formation of trial jury." Subsection (1) remains without change. "(2) The qualifications of jurors and ~~exemptions~~ excuses from jury duty are prescribed in Title 3, chapter 15, part 3."

Section 6. Section 46-16-304, MCA, is amended to read: "46-16-304. Challenges for cause." Subsections (1) and (2) remain without change. (3) An ~~exemption~~ excuse from service on a jury is not a cause of challenge but the privilege of the person ~~exempted~~ excused."

7. Page 2, lines 19 through 22.

Strike: All of Section 6.

DATE

February 2, 1981

COMMITTEE ON

Judiciary

BILL NO.

S.B.
164

SB. 174

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Linda Amstrong	Private Citizen	✓	
Curtis K. Johnson	A-1 Inspector Motor Vehicle	✓	
Michael G. Hurley	Dept. of Revenue	✓	
Bob James	Dept. of Rev.	✓	
William Van Orden	Aide - Sen. S. Brown	✓	
Luan Trust	Mt Home P.C. 112100.		
Pat Wilson	Montico		
Charlie Crace	Mont Water Reservoir Assn		
Angeline Merrill	For Rep. Montico	no position	

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

February 3, 1901

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 24

Respectfully report as follows: That SENATE Bill No. 24

be amended as follows:

1. Title, line 6.
Following: "3-15-313,"
Strike: "AND"

2. Title, line 6.
Following: "3-15-507,"
Insert: "3-15-507, 45-15-301, AND 45-15-304"

3. Page 1, lines 12 through 15.
Following: "juror"
Reinsert: all stricken language.

4. Page 1.
Following: line 15
Insert: "(2) when it satisfactorily appears that the person
should be excused under 3-15-313 or 3-15-507."

DO PASS

4/8

continued

February 3, 1981

5. Page 1, line 19, through line 2 on page 2.

Following: "excused"

Strike: remainder of Section 2

Insert: "-- affidavit to claim excuse. (1) The court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the clerk of the court for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the clerk of the court who shall transmit it to the court. The court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507."

6. Page 2, line 7.

Following: "designates."

Insert: remainder of line 7

7. Page 2.

Following: line 7

Insert: "affidavit claiming an excuse as provided for in 3-15-313."

8. Page 2, lines 13 through 16.

Strike: All of Section 4.

Insert: "Section 4. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare capsules.

(1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313 (1)."

Subsection (2) remains without change.

Section 5. Section 46-16-301, MCA, is amended to read: "46-16-301. Formation of trial jury." Subsection (1) remains without change.

"(2) The qualifications of jurors and exemptions excuses from jury duty are prescribed in Title 3, chapter 15, part 3."

Section 6. Section 46-16-304, MCA, is amended to Read: "46-16-304. Challenges for cause." Subsections (1) and (2) remain without change.

(3) An exemption excuse from service on a jury is not a cause of challenge but the privilege of the person exempted excused."

9. Page 2, lines 19 through 22.

Strike: all of Section 6.

And, as so amended,
DO PASS

SENATE COMMITTEE JUDICIARY

Date February 2, 1981 SENATE Bill No. 120 Time _____

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.	✓	
Olson, S. A.	✓	
Brown, Bob		✓
Crippen, Bruce D.		✓
Tveit, Larry J.		✓
Brown, Steve	✓	
Berg, Harry K.	✓	
Mazurek, Joseph P.		✓
Halligan, Michael	✓	


Secretary

Chairman

Motion: Amend SB 120 on page 3, line 22 after "commissioner",
insert "."; strike remainder of line 22, all of 23, 24, 25;
inscrt "the court may delegate to the jury commissioner the
authority to select the panel, excuse jurors under Section 3-15-313
~~and generally take charge of the jury administration...."~~
(include enough information on motion--put with yellow copy of
committee report.)

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 3, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Iverson, who was excused and Rep. Teague, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 8 SENATOR VAN VALKENBURG, sponsor of the bill, stated this was to amend 46-18-201 to increase to five years the maximum period for deferred imposition of sentence for a felony. An interim committee on corrections policy and facility needs requested the bill. The maximum period for deferred imposition of sentence has been changed from three years to five years. If maximum deferment is increased there would be instances where judges would use the deferred sentence where they might not otherwise do so.

If theft is a person's first offense, it can be difficult to accomplish restitution of that money in a three year period. It is thought that the opportunity to make restitution will be enhanced. It gives the judge the ability to keep the person under supervision a longer period of time.

The positive incentive is getting a clean record with a deferred sentence.

There were no proponents.

There were no opponents.

SENATOR VAN VALKENBURG closed the bill.

REP. HANNAH asked if 18 year olds are primary applicants. The sponsor replied there is no age limit to the bill.

REP. KEEDY asked about a fiscal note. The Senator replied there is none. If the assumption is made that everyone who had a three year sentence would have a five year sentence that would be a false assumption. The judges do not use the deferred sentence as often as they could. This might help the individual and the community.

SENATE BILL 27 SENATOR S. BROWN, sponsor, stated this is to amend 7-32-2121 to charge the sheriff with the duty of supervising search and rescue operations in the field. It makes sense to have just one person in charge.

CHUCK O'REILLY, Montana Sheriffs & Peace Officers, was in support of the bill. Traditionally the sheriff's department has been in charge of these operations. However, there is nothing in the law that defines the sheriff is actually the one to be in charge. Private groups can come in and charge for their service. When a

private group is involved it is hard to say who is in charge of the two groups.

MIKE STEPHEN, Montana Association of Counties, supports the bill. Although this will cost the counties more money it will be a benefit. There has been a problem in the past where a family member is lost. Who actually says the search has been enough? There is a problem when a private organization comes in to search.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. EUDAILY asked who has the legal liability in these cases. O'REILLY stated currently the sheriff's department is liable and the bill would make the sheriff directly liable. The sheriff's department is the only agency opened 24 hours a day. The people call the sheriff when there is a problem. O'REILLY does not see an increase in funds needed if the bill is passed.

REP. EUDAILY asked if the sheriff's men have liability insurance. O'REILLY replied it is different in every county. They get some county funds, the rest is donations through fund drives.

REP. KEEDY asked under what authority are these people called to this. O'REILLY replied under the authority of the sheriff. Our power is very broad. The sheriff's department has the necessary resources including diving equipment, ropes, etc. A private helicopter and ambulance service are available free.

REP. KEEDY asked if in some counties search and rescue operations can be called other than through the sheriff's department. O'REILLY replied the sheriff is the chief law enforcement officer in the county.

REP. HANNAH asked if the sheriff's department can stop any search already in progress. O'REILLY replied they have that ability now. There have been instances where individuals have contracted with private groups. The sheriff's department was searching a river for a body. After three weeks with no sign of the body, they started a spot check method which went on for three months. The family hired people later on to walk the river and search. The sheriff's department cannot stop that as it is up to the family.

REP. HANNAH stated if total control were given to the department then it would seem we are also giving authority to begin and end searches. O'REILLY responded this bill is not changing anything. It is putting into effect what is practiced now.

SENATE BILL 24 SENATOR HAFFERMAN, sponsor, stated this is to eliminate exemptions from jury service. It qualifies when a juror may be excused. EXHIBIT 1 was read. EXHIBIT 2, a list of exemptions, was handed out.

J. C. WEINGARTNER was in favor of the bill. The important part of the bill is the section that is being repealed, section 3-15-311, which lists who does not have to serve on a jury. If a person wants to be excused from jury duty he signs an affidavit and the court determines whether he shall be excused. There are certain people who don't ever serve and others who are always being called. The burden is on the ones who always serve.

SENATOR JOE MAZUREK felt this is a good bill. The exemptions are very broad.

There were no further proponents.

There were no opponents.

REP. KEEDY asked what was being repealed in this bill. SENATOR MAZUREK replied 3-15-314 eliminates affidavit to claim exemption that he was employed in one of the listed occupations. The doctor in a large town would be able to get away from his practice to be on a jury yet a doctor in a small town might not.

REP. HANNAH asked if this was a one time thing. SENATOR MAZUREK replied there is an initial drawing of everyone who is eligible for jury duty. The affidavit could be filed at that time. If it was a continuing one then the judge could excuse that person. If not, it would apply on a case-by-case basis and could result in a continuing application.

REP. EUDAILY asked if there is a reason why a teacher would not be exempt under any circumstance since she has to be in the classroom. SENATOR MAZUREK replied that is how the list of exemptions started. Under this bill it will depend on the court's determination of each particular case.

REP. CURTISS asked about signing the affidavit. SENATOR MAZUREK replied if it is rejected the person is on the panel of those eligible to serve. There is a criminal statute for false swearing.

SENATE BILL 36 SENATOR GOODOVER, sponsor, stated this bill is to provide a method for district court judges as ex officio probate judges to issue deeds for lots. This is to correct a situation when it was repealed.

LEE HEIMAN, Legislative Council, spoke in favor of the bill. EXHIBIT 3.

There are still some of these deeds that have to be cleared up. The bill is needed to eliminate a really involved legal process. Since the judge will be holding the land in trust there will not be the problem with someone sneaking over to get the land. There is a real problem with some of the entry town site deeds.

There were no further proponents.

There were no opponents.

REP. YARDLEY asked if a normal title action covers this. HEIMAN replied they tried to work that out and it literally does not. Title insurance companies disagree with that.

REP. KEEDY asked if a claimant can claim a lot smaller than the township site. A lot is smaller. He would have to pick the township land and so possess it and have title to it since 1921. The RCM section provides only two sections. At one time a deed was issued then anybody else there would lose that right. REP. KEEDY asked if that is what we want. HEIMAN replied his job is to recreate the RCM. There are many ways to add to it.

REP. HANNAH asked if the federal law is the same as what is drafted. HEIMAN replied it is the RCM. Federal law has been repealed except in Alaska.

REP. HANNAH asked if the bill is applied will there be conflicting problems. HEIMAN did not think so.

SENATE BILL 29 SENATOR HAGER, sponsor, stated this bill is to prohibit persons who establish residence near agricultural or farming operations from bringing nuisance suits. The bill is introduced after similar legislation in Massachusetts and Georgia. It is not meant as a substitute of good management.

JO BRUNNER supported the bill. EXHIBIT 4.

PAT UNDERWOOD, Montana Farm Bureau, supported the bill. EXHIBIT 5.

RAY BECK, Montana Association Conservation Districts, supported the bill. EXHIBIT 6.

CHRIS JOHANSEN, Montana Farmers Union, supports the bill.

ALICE FRYSLIE, Montana Cattlemen and National Farmers, supports the bill.

JACK CASEY supports the bill.

JOHN ASAY supports the bill. EXHIBIT 7.

There were no further proponents.

Opponent MIKE MELOY, Montana Trial Lawyers Association, felt the bill has some problems. In the Helena valley dairy farms have depleted because of the city moving outward. A bill like this will not solve that problem. It puts into the law a new type of concept. The bill is exempt from nuisance suits and any complaint against the operation of livestock. Are chickens and turkeys livestock? This bill would prevent a person from bringing suit even though he was there first.

There were no further opponents.

In closing, SENATOR HAGER stated the realtors have no problem with the bill. Harassment and threat of these suits makes it difficult to operate this.

REP. YARDLEY asked for the definition of livestock. It was replied cattle, hogs, dairy and poultry are considered livestock.

REP. HANNAH asked if currently nuisance suits can be filed. MELOY responded it has to be clarified. The judge will decide whether the injury is adequate.

REP. HANNAH asked why this was just limited to agriculture activities. Softball fields are a type of nuisance in the summer around residential areas in the evenings. The sponsor replied noise pollution should be addressed in another bill.

REP. CURTISS asked if there was any consideration to qualify this. The sponsor replied if a facility has been in operation one year or more before another activity appeals.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:45 a.m.

SENATE BILL 8 REP. YARDLEY moved do pass. He felt this would give the judge additional discretion and give him more control. The sentence is still imposed.

REP. HANNAH felt the bill was too broad.

REP. YARDLEY stated the existing law is three years. It would not

be just to say that three years is given for an older person and five years is given for a young person.

REP. DAILY did not feel the committee should make deferred imposition easier. REP. HUENNEKENS replied the essential thing is we are making it harder.

REP. SEIFERT made a substitute motion to table the bill. The motion carried with YARDLEY, BENNETT, EUDAILY, and BROWN voting no.

SENATE BILL 24 REP. SEIFERT moved do pass.

The motion carried with BROWN and MCLANE voting no.

SENATE BILL 27 REP. SEIFERT moved do pass.

REP. HANNAH stated it needs to be clarified what happens if a member is called into service and they have to respond. REP. MATSKO replied as a member of the unit you say you will respond. If you don't you have stopped being in the unit.

REP. KEYSER stated search and rescue is formed for that. If they are called out that is where they will go. If they do, they are under the sheriff's supervision.

The committee asked Sheriff O'REILLY his opinion. O'REILLY stated it is a voluntary group. Work is coordinated with the sheriff's department. A roster is used to see who is available.

REP. HANNAH asked if this gives the sheriff that authority. O'REILLY replied that when the unit is formed the sheriff's department makes a call saying they would like volunteers to respond. The sheriff's department cannot force them to go.

REP. ANDERSON asked about abandoning a search. O'REILLY replied a sheriff could not stop a person from abandoning or continuing a search as long as he was not in violation of the law.

REP. HANNAH asked if the sheriff's department has jurisdiction inside the city limits. It was replied yes. The sheriff is the chief law enforcer in the county.

REP. KEEDY moved following "whenever" on line 17 page 2 to strike through "service" on line 18 and to insert "their services are requested by him". The motion failed with only HANNAH, BENNETT, EUDAILY and KEEDY voting for the amendment.

REP. SHELDEN made a motion to insert on line 18, page 2 "or volunteer for" after "into". The motion failed.

REP. KEEDY was convinced if this bill is passed the sheriff's office will be burdened with legal liability whenever they have to go out.

The motion of do pass carried with KEEDY, HANNAH, EUDAILY, and MCLANE voting against the motion.

SENATE BILL 36 REP. KEEDY moved do pass.

REP. KEEDY moved to postpone action on the bill until an amendment was drawn up. The motion carried.

SENATE BILL 29 REP. MCLANE moved do pass.

REP. CURTISS moved to amend page 2, line 7 after "more" inserting "before residential subdivision or other commercial development occurs". REP. HUENNEKENS felt subdivision is too restrictive. REP. CURTISS withdrew the motion.

REP. KEEDY moved to strike lines 6 and 7 after operation and to insert "longer than the complaining resident has been in possession or commercial establishment has been in operation". The amendment carried.

REP. KEEDY moved to amend the title and page 2, line 2 after "the" striking the rest of the line and line 3 through "manure" and insert "normal operation thereof".

REP. EUDAILY asked for an example of this. REP. KEEDY replied noise from daily farm operations, spraying, or flies.

The amendment carried.

REP. MCLANE moved do pass as amended.

REP. BENNETT felt the owner of the new place next to the farming operation is not being protected. It is being assumed every farmer will get along well with his neighbor. REP. KEEDY responded the second amendment would help eliminate cases where circumstances arose from abnormal operations.

REP. HANNAH felt this should not be tailored to one specific area. What about rifle ranges, baseball fields and airports? If there is a problem we are not doing our purpose if we don't address the whole problem.

Judiciary Committee
March 3, 1981
Page 8

REP. YARDLEY did not feel there was a problem. Not very many local nuisance actions are brought up.

The motion of do pass as amended carried with BENNETT, YARDLEY, HANNAH and SEIFERT voting no.

The meeting adjourned at 11:10 a.m.

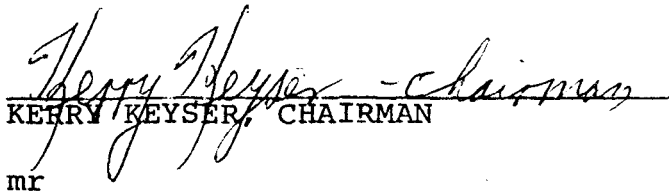
 - Chairman
~~KERRY KEYSER, CHAIRMAN~~
mr



Exhibit 1

Exhibit A

Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman
Montana Senate
Capitol Station
Helena, Montana 59601

Dear Senator Hafferman:

There are two bills currently pending in the Senate in regard to the selection and exemption from service of jurors. The bill which you proposed eliminates the exemptions under MCA-3-15-311 and makes other changes in regard to excuses from service.

The second bill was proposed by the Clerks of Court of Montana and similarly repeals the exemption statute, but then goes on to change the process of selection by appointing the Clerk of Court the "Jury Commissioner". I have inspected both bills quite carefully and heartily endorse both. However, I would urge that the Clerk of Court's bill be passed by the Legislature because it encompasses your bill and puts in reform needed in the larger counties.

I would first like to address the question of jury exemptions. If you look at the history of the bill, you will see that most of the exemption statutes were passed in earlier times. The main concern was the taking of a person vital to community life from the community for a considerable period of time in jury service. Transportation was slow and the trip to the county seat might involve several days in itself. The automobile now makes such plea irrelevant.

1 Day or 1 case

About the only other plea that the persons who now claim exemptions can really make is "I don't want to be bothered" or "I don't want to get involved". Far too often a judge hears that as the real reason that some person who claims an exemption under the present code does not want to serve. While these people claim to be too busy to partake in their civic duties, we frequently find them occupying ski hills, golf courses, taking extended vacations and the like. Such activities which really show that the real reason they want out of jury duty is as stated above.

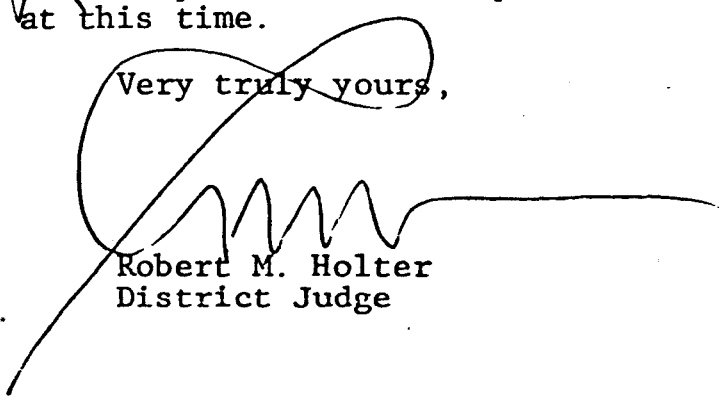
A careful perusal of the exemptions listed will show that the people exempted are the very ones who ought to

to serve on juries. The Legislature every session is in one manner or another approached by persons who wish to limit liability to themselves or their groups. All professional groups these days talk of "malpractice" yet these are the same ones who claim exemptions! Needless to say, it is ironic that the persons who claim to be targets of lawsuits do not want to serve on juries. In the smaller communities, these persons also represent the ones who have had better educational opportunities, greater exposure to the more complicated problems of life and as a result thereof are probably better informed. While they do not want to put aside their daily labors, I must remind you that their daily pay is no more important to them than a person who does not have the exemption. Nay, the person with less education probably sacrifices more by missing a few days of work.

In regard to the Jury ~~Commissioner~~ as suggested by the Clerks of Court of Montana. This is another jury service reform which will be very helpful. Under the present usage, it takes a great deal of the District Judge's time to comply with the jury selection requirements. Under the Clerk's bill, the Clerk would be substituted for the judge and would take over the judge's duties. The Clerk would be bound by the same stringent rules which guide the judge. Statewide, this bill will result in the saving of a great deal of the District Court Judge's time, freeing him for duties which are judicial other than simply administrative as the jury selection process is.

You have the right to utilize these observations for any purpose you wish in regard to the pending legislation. I wish I could spare the ~~time~~ to present them in person, but find it impossible to do at this time.

Very truly yours,



Robert M. Holter
District Judge

RMH:jr

C. 1907; re-en. Sec. 4449, R.C.M. 1921; re-en. Sec. 4449, R.C.M. 1935; Sec. 16-810, R.C.M. 1947; R.C.M. 1947, 16-810, 93-1302.

3-15-303. Who not competent. A person is not competent to act as juror.

- (1) who does not possess the qualifications prescribed by 3-15-301; or
- (2) who has been convicted of malfeasance in office or any felony or other high crime.

History: En. Sec. 231, C. Civ. Proc. 1895; re-en. Sec. 6338, Rev. C. 1907; re-en. Sec. 8892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 199; re-en. Sec. 8892, R.C.M. 1935; R.C.M. 1947, 93-1303.

3-15-304 through 3-15-310 reserved.

3-15-311. Who exempt. (1) A person is exempt from liability to act as a juror if he is:

- (a) a judicial, civil, or military officer of the United States or of this state;
- (b) a person holding a public office in this state or in a county, city, or town of this state;
- (c) an attorney in practice;
- (d) a member of the clergy of any religion following his profession;
- (e) an editor following his profession;
- (f) a teacher in a university, college, academy, or school;
- (g) an employee of the Montana state school for the deaf and blind;
- (h) a practicing physician, dentist, or druggist actually engaged in the business of dispensing medicines;
- (i) a regularly licensed embalmer or undertaker;
- (j) an officer, keeper, or attendant of a hospital, mental health facility, or other charitable institution;
- (k) an officer or attendant of the state prison or a county jail on active duty;
- (l) an express agent, mail carrier, or superintendent, employee, or operator of a telegraph line doing general telegraph business in this state;
- (m) an active member of the national guard of Montana;
- (n) an active member of a fire department of any city or town of this state;
- (o) a superintendent on a railroad;
- (p) a nurse engaged in a case; or
- (q) a person caring directly for one or more children.

(2) The number of firefighters exempted under subsection (1)(n) may not exceed 28, including officers, for each company organized. The exempt members shall be selected from the roll of each company according to the seniority of membership. The secretary of each company shall make a list of the exempt members and file it with the clerk of the board of county commissioners on the first Mondays of March, June, September, and December. Failure to file the list is considered a waiver of the exemption.

(3) When a person claims exemption under subsection (1)(g), the certificate of the superintendent of the school, under the official seal of the school, is sufficient evidence of qualified employment.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en.

RE: Senate Bill 36

Repealed section from Revised Codes of Montana, 1947, that is basis for S.B. 36.

11-3026. (5356) District judge authorized to execute deeds—procedure. Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a townsite, under the provisions of an act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or other and subsequent acts of Congress relating to entering lands for townsite purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such townsite is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex officio probate judge, for any lot or tract of land situated in such townsite other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919;
re-en. Sec. 5356, R. C. M. 1921.

NAME Jo Brunner BILL No. SB 29
ADDRESS 531 South Oakes DATE 3/3
WHOM DO YOU REPRESENT Women Involved in Farm Economics
SUPPORT X OPPOSE _____ AMEND _____
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Speaker, members of the committee, for the record, my name is Jo Brunner and I represent Women Involved in Farm Economics.

We are in support of Senate bill 29. We feel such protection for land owners and business people is long overdue. We have all at one time or another seen what happens to an established business when subdivisions crowd in around them, and find the odors and animals unacceptable. Before long the move is underway to eliminate that nuisance.

This would give the established business or operation the protection it needs.

We would like to see this carried ^a ~~one~~ step further so that offensive ^{unincorporated} businesses and operations could not move into small towns and subdivisions and set up work....

We ask that you pass Senate bill 29.

Thank you/

NAME

PAT Underwood

Bill No.

SB 29

ADDRESS

BOX 1207 Bozeman, MT.

DATE

MAR 3, 1981

WHOM DO YOU REPRESENT

MONTANA FARM BUREAU

SUPPORT



OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit 5

Comments:

The MONTANA FARM BUREAU has policy which SUPPORTS the concepts presented in this BILL. IT is a good piece of legislation that is needed now in MONTANA, we URGE a "DO PASS" on SB 29.



Montana Association Of Conservation Districts

Exhibit 6

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

SB 29

Studies indicate that an average of about 12 square miles of U.S. farmland each day is being paved over for parking lots and highways, subdivided for houses, factories and shopping centers, flooded to form reservoirs or converted to other uses. That adds up to a loss of 3 million acres a year, 1 million acres of which are considered prime agricultural land.

Senate Bill 29 addresses a problem that is becoming a big concern to many farm and ranch operators in Montana. Although this bill will not be the solution to all the pressures being placed on agricultural units where subdivision encroachment is taking place, it will eliminate the nuisance suit problems which will be a very big benefit.

The Montana Association of Conservation Districts and the Montana Association of State Grazing Districts would like to be shown in the record as in strong support of Senate Bill 29.

Thank you.


RAY BECK
Executive Vice President

NAME John Asay BILL No. SB 29
ADDRESS 800 5th St. DATE 2/3/81
WHOM DO YOU REPRESENT Montana Cattlefeeders Assoc.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

this legislation offers necessary and justifiable protection for the huge investments of existing Rural livestock businesses from the risks imposed by capriciously located later development.

Passage of Senate Bill 29 into law will impose responsible judgement on exploiters of rural property, inject fairness into relative judicial determinations, and offer relief from one unpredictable and unfair risk to an already high-risk agricultural investment.

We urge this committee to grant an affirmative vote for S.B. 29 and thank you for your favorable consideration.

VISITORS' REGISTER

HOUSE.

JUDICIARY

COMMITTEE

SENATE

BILL

8

Date 3/3/81

SPONSOR

Van Valkenburg

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

JUDICIARY

COMMITTEE

SENATE

BILL 27

Date 3/3/81

SPONSOR S. Brown

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL 29

Date 3/3/81

SPONSOR Hager

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.